

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STEPHEN McCOLLUM, STEPHANIE
KINGREY, and SANDRA McCOLLUM,
individually and as heirs at law to the Estate of
LARRY GENE McCOLLUM,
PLAINTIFFS

V.

BRAD LIVINGSTON, JEFF PRINGLE,
RICHARD CLARK, KAREN TATE,
SANDREA SANDERS, ROBERT EASON, the
UNIVERSITY OF TEXAS MEDICAL
BRANCH and the TEXAS DEPARTMENT OF
CRIMINAL JUSTICE.

DEFENDANTS

CIVIL ACTION NO.
3:12-cv-02037

**PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY
IN RESPONSE TO UTMB'S MOTION TO DISMISS**

Plaintiffs advise the Court of persuasive Northern District of Texas authority supporting their response to Defendant University of Texas Medical Branch's motion to dismiss Plaintiffs' Americans with Disabilities Act and Rehabilitation Act claims (Doc. 55).

On December 16, 2013, Judge Reed O'Connor denied a nearly identical motion to dismiss ADA and Rehabilitation Act claims brought against a prison medical provider in *Wright v. Texas Department of Criminal Justice*, No. 7:13-cv-0116-O, Doc. 16 (N.D. Tex. Dec. 16, 2013).¹ Judge O'Connor found plaintiffs stated a claim against the prison's medical provider by alleging the provider failed to make recommendations to safely house inmates with disabilities – specifically, cells with roommates or without “tie-off” points for mentally ill inmates known to be at risk of suicide. Allegations the medical

¹ A copy of the order is attached as Exhibit 1.

provider failed to recommend safe housing “state[s] a *prima facie* case that [the medical provider] violated the ADA and Rehabilitation Act.” *Id.* at 8.

The critical facts and allegations are the same here. UTMB knew McCollum was a person with a disability who needed protection to be housed safely. But it failed to do so, and McCollum died. Thus, this Court should consider Judge O’Connor’s decision as persuasive authority, and Plaintiffs’ respectfully request the Court deny the motion to dismiss for the same reasons.

DATED: December 19, 2013.

Respectfully submitted,

The Edwards Law Firm
The Haehnel Building
1101 East 11th Street
Austin, Texas 78702
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards

JEFF EDWARDS
State Bar No. 24014406
Scott Medlock
State Bar No. 24044783
Lead Counsel

Brian McGiverin
State Bar No. 24067760
James C. Harrington
State Bar No. 09048500

TEXAS CIVIL RIGHTS PROJECT
1405 Montopolis Drive
Austin, TX 78741
(512) 474-5073 [phone]
(512) 474-0726 [fax]

Eliot Shavin
State Bar No. 18138200
2600 State Street
Dallas, Texas 75204
214-522-2010 (telephone)
214-720-9594 (fax)
Local Counsel

CERTIFICATE OF SERVICE

By my signature above, I certify that a true and correct copy of the foregoing has been served on all counsel of record through the Electronic Case Files System of the Northern District of Texas.